97TH CONGRESS
1ST SESSION

S. 1273

To amend the Central Intelligence Agency Act of 1949, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 27), 1981

Mr. CHAFEE (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

---

A BILL

To amend the Central Intelligence Agency Act of 1949, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Reform Act of 1981".

SEC. 2. Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended to read as follows:

"SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. 403(d)(3)) that the

Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with—

"(1) the design, function, deployment, exploitation, or utilization of scientific or technical systems for the collection of foreign intelligence, counterintelligence, or counterterrorism information;

"(2) special activities and foreign intelligence, counterintelligence, or counterterrorism operations;

"(3) investigations conducted to determine the suitability of potential foreign intelligence, counterintelligence, or counterterrorism sources; and

"(4) intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services.

Notwithstanding the preceding sentence, requests by United States citizens and by aliens who are lawfully admitted for permanent residence in the United States for information concerning themselves made pursuant to any provision of law shall be processed in accordance with such provision. The provisions of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of the Intelligence Reform Act of 1981 and which specifically repeals or modifies the provisions of this section.".

O

Next 1 Page(s) In Document Denied

Senator Dave Durenberger

STATEMENT OF
SENATOR DAVE DURENBERGER
ON THE
NEW EXECUTIVE ORDER ON NATIONAL SECURITY INFORMATION
APRIL 2, 1982

The new Executive Order on National Security Information is a real disappointment. It could result in classification of information that ough to remain open to the public, and seriously limit the public's access to information that was once secret but need not be secret any longer. It affects the media, the public and historical research. Many of the Executi Order's flaws may be corrected in the Implementing Directive that is to be issued later and I hope that will be the case. However, other shortcoming require new legislation that I plan to introduce.

This Executive Order leaves me more convinced than ever that Congres must not rush into any FOIA or Privacy Act amendments. The administration had the opportunity to submit a bill regarding intelligence exemptions to t Intelligence Committee. In fact, such a bill was promised. Instead, the administration chose to limit the public's access to information through administrative fiat, often against the advice of members of the Intelligenc Committee. In light of that decision, I see no reason to grant them legislative relief. Let the administration see how this new Order works. When a bill is submitted, let it correct the flaws in this Order.

The deletion of the "identifiable damage" standard for classifying information is certain to result in keeping information from the public unnecessarily. The executive branch does not intend this, but it is bound to happen. I will introduce legislation that will protect the Freedom of Information and Privacy Acts from the effects of this change.

The lack of a "balancing test" between the need to protect information and the benefits that flow from informing the public is unacceptable, especially in light of other provisions that change many decisions from permissive ones to mandatory ones in favor of classification and against declassification. I will introduce legislation to insure the classified information kept from FOIA and Privacy Act petitioners is first subjected t the balancing test by the agency that classifies it.

The provision allowing re-classification of information that "may reasonably be recovered" is far too broad. Already, overzealous bureaucrat have begun to threaten people with legal action if they do not return varic materials previously released under the Freedom of Information Act. Re-classification should be allowed only if voluntary recovery is possibl I urge the executive branch to make this crystal clear in its Implementing Directive. If it is not clarified, I will introduce legislation to protect persons who receive information under the Freedom of Information or Privacy Acts.

I also am concerned about other provisions of the Executive Order that may infringe on the rights of individuals as guaranteed by the Privacy Act. The definition of "confidential source," for example, would allow an agency to classify its surveillance or attempted recruitment of unwitting American who could be seen as possible sources of information. I urge the executiv branch to limit the applicability of this definition to foreign individuals or organizations. This would preserve law-abiding people's rights under th Privacy Act to find out whether the government has been following them.

As a member of the Senate Select Committee on Intelligence, I am sensitive to the need to protect information for the sake of our country's security. However, we have seen the abuses that can come from an over-zealous protection of information. In recent years, those abuses have encouraged the Congress and previous administrations to carefully weigh necessary secrecy with the public's right to know. I am not willing to unnecessarily tip the scales in favor of secrecy.

Contact: Tom Horner
(202) 224-3244

ADDRESS BEFORE THE SOCIETY
OF PROFESSIONAL JOURNALISTS
ON RECEIPT OF THE FIRST AMENDMENT AWARD

Jas D

JANUARY 27, 1983

It is a great pleasure to be here today and a great honor to receive this award from a group whose efforts I respect so deeply. To me the working of the city room of a newspaper is the heartbeat of our democracy.

We are facing a year when it will become something of a cliche to discuss whether the government and technology will prevail over the individual mind and human spirit.

I can note with great satisfaction that 1984 will not mark the beginning of Big Brother and the end of free expression, but rather the tenth anniversary of amendments to FOIA securing in practice rights that had been established in theory eight years earlier.

So important has the Freedom of Information Act become in an age when complexity can make secrecy pose as a virtue, that it is difficult for me to remember that FOIA is only a statute and not a part of the Constitution. But the Act is only another statute on the books, and the current Administration has given ample warning that it is one statute it would like to see weakened or even, crippled.

It is truly sad that the President's most profound statement to date on openness in government appeared a short time ago in one statement: "I've had it up to my keister with these leaks."

D

I know it must be terrible to have your policies leaked to the press in advance, but his problems aren't really so bad. He has to live with a lot of leaks. Some of us feel we have it much worse. We have to live with the policies.

President Reagan would be in a lot better frame of mind if he understood that FOIA strengthens the people's faith in their government. This one Act has proved to be an invaluable tool for turning government accountability from a catchphrase to a reality. It has led to public disclosure of government waste and wrongdoing, as well as expanding public knowledge of health, safety and environmental matters. Through FOIA, the press revealed discrimination in the administration of federal contracts, major medicare fraud by private health organizations, defective and unsafe consumer products, and harmful drugs and medical devices.

But FOIA is more than the sum of its specific achievements. It puts a mammoth government on the same plane as any citizen it serves. It makes available to that citizen the information to deal with the complexity of government and to understand its actions and purposes. The Act is one of the most stabilizing forces in our democracy. It is not to be tampered with casually.

In the 97th Congress the Reagan Administration, along with its Senate allies, presented the Congress with a set of proposals which would have gutted the Act. Working with a broad coalition of public interest groups -- and with special help from the press groups -- I was able to convince my colleagues on the Senate Judiciary Committee to accept a substitute for the Reagan-Hatch bill which left the essential features of the law intact. Once that substitute was accepted, those whose agenda was to destroy, and not improve the Act, lost interest.

But if I was unconvinced by President Reagan's arguments on amending FOIA, I'll admit that his actions have done a good job of convincing, where his words have failed. I now agree that FOIA needs to be amended. It needs to be more resistent to obstruction

from within by a government hostile to its purposes:

- The Department of Justice recently adopted a stringent -- perhaps I should say stingy -- policy on fee waivers, after the Senate Judiciary Committee rejected a similar proposal in the Administration bill.

- EPA has undertaken a policy to restrict the release of industry data that would help expose pesticide threats to workers and others, after the House rejected a similar proposal and Senator Helms failed in his effort to include it in legislation before the Senate.

- President Reagan's Executive Order on classification swept away a trend of nearly three decades aimed at better informing the American public about national defense and foreign policy issues.

More than any one of these examples, I am concerned that all of them together reflect a policy that promotes secrecy as the norm dominating transactions with the government. It was not a momentary lapse when former Secretary of Health and Human Services Schweiker -- faced with a mountain of public criticism on the so-called birth control squeal rule -- threatened to repeal an agency procedure instituted by Elliott Richardson promoting free and open comment. While this does not concern FOIA, it reflects the same penchant for action out of the view of public scrutiny that made FOIA necessary.

The Congress did not take action on any FOIA bill in the 97th Congress, and I think that the 98th Congress is ready for an affirmative FOIA bill, and not just a response to legislation designed to limit access. I will be introducing a bill to amend the Act entitled "The Freedom of Information Improvement Act of 1983," and I truly hope that the word "improvement" will not bear the ironic tinge that characterized so many "improvement" bills in the 97th Congress.

Briefly my bill would do the following:

- The fee waiver standard will be strengthened for members of the news media, non-profit groups who intend to make the information available to the public, and persons engaged in non-commercia scholarly research.

- Requesters will be able to challenge a denial of a fee waiver in court under a standard which permits the court to take a fresh look at whether the waiver standard has been met.

- Time limits will be made enforceable by creating economic penalties for an agency that does not meet the time limits, while giving economic incentives for timely compliance.

- The tide of special interest withholding statutes we have seen recently will be stemmed by requiring that new withholding statutes come before the Senate Judiciary Committee and House Government Operations Committee, which have legislative jurisdiction over FOIA.

- The delicate balance between the national security and the need to know will be restored by requiring agencies to consider whether the need to protect classified national defense and foreign policy information outweighs the public interest in disclosure. Senator Durenberger and I introduced this proposal in the last Congress and I intend to continue to work with him and my other colleagues on the Senate Intelligence Committee to ensure that we c restore a presumption of openness while at the same time strengthen the protection required for documents which legitimately require classification on security grounds.

These changes will make disclosure under FOIA fairer, faster, and more certain.

And yes, there are some changes that should be made to FOIA because it isn't working as well and as fairly as it should.

• The protection of law enforcement information sources can be strengthened.

• Fair procedures to allow submitters of information a reasonable opportunity to object to release of data must be established. This change would benefit submitters, requesters, and the agency involved.

• Commercial users, who account for two-thirds of the costs to the government in processing FOIA requests, must bear their fair share for access.

• Agency time limits under FOIA should be made more realistic and enforced more vigorously.

Perhaps in the longer run the most serious problems with FOIA will be to reconcile its vital purposes with the growing threat to personal privacy evident everywhere in our culture, as a direct consequence of the information technology revolution. Increasingly, the government has been breaking down the legal and policy barriers designed to stop the use of one set of computer information collected by the government for a different purpose. Computer matching has become the favorite law enforcement tool of the Reagan Administration.

What we are witnessing is a trend toward making government information less accessible to citizens, and information about citizens more accessible to government and businesses. If information is properly gathered and maintained, there is little potential for abuse of the privacy right in the Freedom of Information Act. But I have little reason to be complacent about the treatment of privacy within government, and consequently the two important rights will have to be scrutinized together as we venture headlong into the age of the computer chip.

In the coming years, you in the press will have to convince the wider community that you have carefully measured your need for access against the right of individual privacy. And all of us concerned with the future of FOIA must be equally vigilant in preventing the advocacy of privacy from serving as an excuse to hobble openness.

In closing I can think of no more appropriate words than those used by the Senate Judiciary Committee in the 89th Congress in reporting the original Freedom of Information Act:

• A government by secrecy benefits no one.

• It injures the people it seeks to serve; it injures its own integrity and operation.

• It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty.